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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SONOS, INC.,

Plaintiff,

v.

GOOGLE LLC,

Defendant.

Case No. 3:21-cv-07559-WHA

**SONOS, INC.'S OPPOSITION TO
GOOGLE LLC'S MOTION TO DISMISS
SONOS'S SECOND AMENDED
COMPLAINT**

Date: February 24, 2022
Time: 8:00 a.m.
Place: Courtroom 12, 9th Floor
Judge: Hon. William Alsup

Second Amnd. Complaint Filed: 02/23/2021

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STATEMENT OF THE RELIEF REQUESTED

Sonos, Inc. (“Sonos”) requests that this Court deny Google LLC’s (“Google”) motion to dismiss Sonos’s claims of willful and indirect infringement for U.S. Patent No. 10,848,885 (“the ’885 Patent”); U.S. Patent No. 10,779,033 (“the ’033 Patent”), and U.S. Patent No. 10,469,966 (“the ’966 Patent”) in Sonos’s Second Amended Complaint (“MTD”). Dkt. 138.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Google’s motion to dismiss is predicated on the premise that Google did not have pre-suit knowledge of the ’033, ’966, and ’885 Patents. This is demonstrably false. Indeed, *Google relied on a copy of Sonos’s draft complaint to file a claim for declaratory judgment before Sonos filed its complaint*. Through that complaint, Google told this Court that it had not only *read* Sonos’ draft complaint before it was filed (and therefore knew about the asserted patents), but had actively evaluated the assertions in that complaint and come to the conclusion that Google did not infringe. But if the pre-suit information Sonos provided to Google was sufficient for Google to evaluate Sonos’ claims for infringement and file a lawsuit claiming that Google did *not* infringe then Google—by definition—had pre-suit knowledge of the patents.

Moreover, even if Google could somehow show that it lacked *prefiling* knowledge, the law in this district is clear that claims for post-filing willfulness and indirect infringement can be predicated on the notice given by an initial complaint. The Court should, therefore, deny Google’s motion to dismiss the claims for willfulness and indirect infringement in the operative Second Amended Complaint.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. A Brief History of Google’s Infringement.

Since its founding in 2002, Sonos has invested heavily in research and development. *See* Dkt. 51 (Second Amended Complaint, or “SAC”) ¶¶ 1, 4-5. As a result, Sonos has created many new technologies and its products have achieved widespread critical recognition for their innovations. *Id.* ¶¶ 5-6, 9. Almost a decade after Sonos entered the smart-speaker market Google sought to work with Sonos and, in 2011, the parties began to integrate the Google Play Music

1 service into the Sonos ecosystem. *Id.* ¶¶ 11-12. Through these efforts, Google gained access to
 2 Sonos’s engineers, products, and proprietary technology. *Id.* ¶ 11. In 2015, Google began copying
 3 Sonos’s technology. *Id.* ¶¶ 14, 16, 27-29.

4 **B. Sonos Repeatedly Told Google That The Products Accused In This Case**
 5 **Were Making Use of the Technology Described In the Asserted Patents.**

6 Since 2016, Sonos has repeatedly warned Google about its infringement of various Sonos
 7 patents and patent families. *Id.* ¶¶ 17, 19. Although this correspondence did not specifically
 8 identify the ’033, ’966, and ’885 Patents, it did repeatedly tell Google (a) that the same features
 9 (and the Google products that existed at the time) at issue in this case were infringing multiple
 10 *parents* of those patents and (b) that Sonos was continuing to prosecute patents in these families
 11 that Google would infringe. *See, e.g., Google LLC v. Sonos, Inc.*, Case No. 3:20-cv-6754-WHA,
 12 (N.D. Cal. Sept. 28, 2020) (hereinafter, “DJ Dkt.”), Dkt. 81-1 (Declaration of Cole B. Richter in
 13 Support of Sonos’s Opposition to Google’s Motion for Leave to File a Second Amended
 14 Complaint) at Ex. I, ECF pp. 45-46 of 84; Declaration of Evan D. Brewer (“Brewer Decl.”),
 15 Ex. B, at PDF p. 27; Ex. D, at PDF p. 49.

16 For example, on October 13, 2016, Sonos sent Google a presentation identifying 22 Sonos
 17 patents and, for each of them, products and features that Sonos accused of infringement.¹ Brewer
 18 Decl., Ex. A; SAC ¶ 20; Dkt. 129 at 2. Among the Sonos patents called out in this letter was Pat.
 19 No. 8,483,853 (the “’853 patent”). Brewer Decl., Ex. A, at PDF p. 21. The ’966 and ’885 Patents
 20 had not issued at the time of this letter, but are continuations from the ’853 patent and share a
 21 common specification. The claims of all three patents are directed to the grouping of players in
 22 media system zones, or, as indicated in the title of the ’966 and ’885 “zone scene management.”
 23 The October 13, 2016 letter accused Google of infringing through the same features that are
 24 accused in this complaint. *Id.* at PDF pp. 9-10.

25 Two weeks later, on October 26, 2016, Sonos sent Google a presentation with information
 26 on additional patents, and telling Google both that Sonos was continuing to prosecute patents in
 27 the asserted families, and that Google would be infringing many of those patents as soon as they

28 ¹ While Google has not moved to dismiss the ’615 or ’966 Patents, *see* MTD at 1, Sonos includes facts related to those patents here to provide context.

1 issued. *See* DJ Dkt. 81-1, Ex. I (email from Chris Butts of Sonos to John LaBarre of Google,
 2 attaching a document titled “Google Deck 2016.10.25,” sent on October 26, 2016). This
 3 presentation also identified Pat. No. 9,344,206 (the “’206 patent”), a direct ancestor to the ’966
 4 and ’885 patents as a patent that Google was infringing. And the presentation told Google that
 5 Sonos was continuing prosecution of its portfolio in the relevant technological areas and that the
 6 accused products would infringe when those patents issued. *Id.*, Ex. I, at ECF pp. 45-46 of 84.

7 On January 31, 2018, Sonos sent Google a PowerPoint presentation identifying 12 more
 8 Sonos patents as well as the Google products and features that infringed each of them. Brewer
 9 Decl., Ex. B; *see also* Dkt. 129 at 2. Among the Sonos patents called out in this presentation was
 10 Pat. No. 8,843,228 (the “’228 patent”). Brewer Decl., Ex. B, at PDF pp. 33-36. The ’966 and ’885
 11 patents (which had not yet issued) are continuations from the ’228 patent, and therefore share a
 12 specification with it. In this presentation, Sonos highlighted claim 1 of the ’228 patent, a method
 13 for “zone scene management” that is similar to the asserted claims of the ’966 and ’885 in this
 14 case. *Id.* Sonos accused Google of infringing the ’228 patent by making and selling products and
 15 features that are currently accused of infringing the ’996 and ’885 patents. The presentation also
 16 (again) warned Google that its infringement would expand as Sonos continued to prosecute the
 17 patent families had identified in the presentation. *Id.*, Ex. B, at PDF pp. 27-29.

18 On July 12, 2018, Sonos sent Google a letter identifying 58 Sonos patents and the
 19 products and services that infringed each of them. DJ Dkt. 81-1, Ex. C (excerpt of an email from
 20 Mark Triplett of Sonos to John LaBarre and Matthew Gubiotti of Google, attaching a document
 21 titled “Sonos IP License Model Presented 2018.07.12,” sent on July 12, 2018); *see also* Dkt. 129
 22 at 2. In the July 12, 2018 letter, Sonos provided additional information about Google’s
 23 infringement of the ’206 patent (discussed above), including the fact that the Google Home Max,
 24 Google Home, Google Mini and Google Cast (all of which are accused of infringing the ’966 and
 25 ’885 in this case) were infringing. DJ Dkt. 81-1, Ex. C, at ECF p. 17 of 84.

26 On February 22, 2019, Sonos sent Google a letter and 100 *claim charts* detailing how
 27 Google infringed 92 Sonos patents and the pending claims of 8 patent applications. DJ Dkt. 81-1,
 28 Ex. E (letter from Mark Triplett at Sonos to Matthew Gubiotti, Bradley Riel, and Tim Kowalski

of Google sent on February 22, 2019); Dkt. 129 at 2; SAC ¶ 22; *see also* Brewer Decl., Ex. C (9,654,821 patent claim chart). Included in that correspondence were claim charts directed to the '228 and '206 patents (discussed previously), as well as Pat Nos. 9,654,821 (the "'821 patent") and 9,883,234 (the "'234 patent"). *See* Brewer Decl., Ex. C. The currently asserted '033 patent (which had not issued at that time) is a continuation in a chain that contains both the '234 and '821 patents, and therefore shares the same specification. The claims of the '234 and '821 patents are both directed to direct control technology for transferring and controlling media playback between devices, like the asserted claims of the '033 patent. And, in its February 2019 claim charts, Sonos asserted those predecessor patents against features and products that are accused of infringing the '033 in this case. *See id.*, Ex. C, at PDF p. 39; *see also* SAC ¶¶ 17-24.

On June 13, 2019, Sonos sent Google a PowerPoint presentation discussing 6 Sonos patents in the context of a licensing proposal. These discussions once again focused on the '228 patent which, as previously discussed, is an ancestor of the '966 and '885 Patents. Brewer Decl., Ex. D; Dkt. 129 at 2. This presentation again told Google that it was infringing the '228 patent through the sale of the products accused of infringing the '966 and '885 patents in this case. Brewer Decl., Ex. D, at PDF pp. 49-50.

On January 6, 2020, Sonos sent Google a pre-filing copy of an International Trade Commission Complaint,² a U.S. District Court complaint, and claim charts, which detailed Google's infringement of 5 Sonos patents (most of which had previously been shown to Google in the correspondence described above). Dkt. 129 at 2-3; SAC ¶ 26. Those patents were not, however, family members of the patents that Google challenges in this motion.

Taken together, it is undisputed that in the years leading up to this dispute, Sonos repeatedly told Google that the very features that are at issue in this case were making use of the technology disclosed in the parents of the three patents that Google challenges in this motion. The correspondence also told Google that Sonos was continuing to prosecute additional patents in the

² On January 7, 2020, Sonos sought injunctive relief from the United States International Trade Commission based on Google's infringement of five different patents from the patents at issue in the present matter. *See Certain Audio Players and Controllers, Components Thereof, and Products Containing Same*; Inv. No. 337-TA-1191 (2020).

1 currently asserted families. As discussed below, these facts are highly relevant to Sonos’
 2 allegation of willful blindness.

3 **C. Google Also Received Express Prior Notice For Each Challenged Patent.**

4 Although the parties engaged in extensive discussions, they could not reach an agreement
 5 on a resolution, and Google refused to stop its infringement. So Sonos prepared a detailed 87-
 6 page complaint with 44 exhibits alleging that Google directly and indirectly infringes the ’966
 7 and ’033 Patents, along with three other patents which are not at issue in this motion. Dkt. 1.

8 In that draft complaint, Sonos laid out the history that had brought the parties to this point
 9 (*id.* ¶¶ 10-29), provided exemplary claim charts for each asserted patent (*id.* ¶¶ 81-82, 93-94, 105-
 10 06, 118-19, 131-32), explained how Google indirectly infringes each patent, (*id.* ¶¶ 84-85, 96-97,
 11 108-09, 121-22, 134-35), and alleged that Google’s infringement was and continued to be willful
 12 (*id.* ¶¶ 14, 26-27, 36-37, 41, 86-87, 89, 98-99, 101, 110-11, 114, 123-24, 127, 136-37, 139).

13 On September 28, 2020, Sonos provided Google with a pre-filing copy of the complaint
 14 and informed Google that it would soon file it in the Western District of Texas. *Id.* ¶ 36; Dkt. 136
 15 (Joint Case Management Statement) at 1. However, shortly before Sonos filed its complaint,
 16 Google filed its own complaint in this District seeking declaratory judgment of non-infringement
 17 of the same five patents. DJ Dkt. 1. The Court eventually stayed Google’s case, explaining that
 18 “Google’s choice of forum carrie[d] no weight, nor d[id] the fact that it managed to file first”
 19 because “the manifest purpose of Google’s suit was to beat the clock and defeat the patent
 20 owner’s choice of venue.” DJ Dkt. 36 at 3.

21 While this case was stayed, Sonos continued to litigate its claims in the Western District
 22 of Texas. On January 8, 2021, Sonos provided Google with a draft amended complaint that
 23 described how Google’s products infringed the ’885 Patent. SAC ¶ 130. More than a month later,
 24 on February 17, 2021, Sonos filed an amended complaint, adding claims for infringement of the
 25 ’885 Patent. Dkt. 49.

26 On February 23, 2021, Sonos filed a Second Amended Complaint, dropping its claims of
 27 infringement relative to one patent that is not at issue in this motion. Dkt. 50. On March 9, 2021,
 28 Google moved to dismiss Sonos’s claims of willful and indirect infringement for the ’033, ’966,

1 and '885 Patents pursuant to Federal Rule of Civil Procedure 12(b)(6) or 12(c). Dkt. 55.

2 However, before the Western District of Texas ruled on that motion, the case was transferred to
3 this Court. Dkt. 117.

4 On January 10, 2022, Google again moved pursuant to Rule 12(b)(6)³ to dismiss Sonos's
5 claims of willful and indirect infringement for the '033, '966, and '885 patents. *See* MTD.

6 **III. LEGAL STANDARDS**

7 As the Court knows, a motion to dismiss under Rule 12(b)(6) may only be granted if, after
8 accepting the well-pleaded allegations as true and viewing them in the light most favorable to the
9 plaintiff, the court concludes that these allegations cannot raise "enough facts to state a claim
10 [for] relief that is plausible on its face." *Corephotonics, Ltd. v. Apple, Inc.*, No. 17-CV-06457-
11 LHK, 2018 WL 4772340, at *5 (N.D. Cal. Oct. 1, 2018) (quoting *Bell Atl. Corp. v. Twombly*, 550
12 U.S. 544, 570 (2007)).

13 **A. Willful Infringement.**

14 "The intensely factual issues inherent in a claim of willfulness counsel against early
15 dismissal at the pleading stage." *Firstface Co. v. Apple, Inc.*, No. 18-CV-02245-JD, 2019 WL
16 1102374, at *2 (N.D. Cal. Mar. 8, 2019). This is because "[t]here is no precise rule or formula for
17 awarding damages for willfulness in a patent infringement suit." *See Fluidigm Corp. v. IONpath,*
18 *Inc.*, No. C 19-05639 WHA, 2020 WL 408988, at *4 (N.D. Cal. Jan. 24, 2020).

19 The Federal Circuit has also made it clear that the question of whether a defendant's
20 infringement is willful is a separate question from the question of whether the Court should award
21 enhanced damages once willfulness has been shown. *Eko Brands, LLC v. Adrian Rivera Maynez*
22 *Enterprises, Inc.*, 946 F.3d 1367, 1378 (Fed. Cir. 2020) ("The question of enhanced damages is
23 addressed by the court once an affirmative finding of willfulness has been made. It is at this
24

25 ³ A Rule 12(b)(6) motion must be made before the responsive pleading. *See* Fed. R. Civ. P.
26 12(b). Because Google answered Sonos's allegations under the '033 and '966 Patents two
27 months before moving to dismiss, *see* Dkt. 32, Google's motion is untimely and improper with
28 respect to those two patents. The Court may, however, exercise its discretion to consider
Google's untimely motion as a motion for judgment on the pleadings. *See Sealant Sys. Int'l, Inc.*
v. TEK Glob., No. C 11-00774 PSG, 2012 WL 13662, at *3 (N.D. Cal. Jan. 4, 2012).

second stage at which the considerations of egregious behavior and punishment are relevant.”)
(internal citation omitted).

Although Google’s motion tries to conflate the two questions, the question of whether misconduct has been willful does not properly involve an evaluation of whether the alleged misconduct is “egregious.” *See id.* at 1378 (“Under *Halo*, the concept of ‘willfulness’ requires a jury to find no more than deliberate or intentional infringement.”) (citing *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 579 U.S. 93, 105 (2016)). Thus, Sonos need not plead facts showing egregious misconduct in order to state a claim for willful infringement.

B. Indirect Infringement.

To state a claim of induced infringement, Sonos must plead facts giving rise to a reasonable inference that Google “knew of the patent, knowingly induced the infringing acts, and possessed a specific intent to encourage another’s infringement of the patent.” *Gamevice, Inc. v. Nintendo Co.*, No. 18-CV-01942-RS, 2018 WL 5310792, at *4 (N.D. Cal. Aug. 6, 2018) (quoting *Vita-Mix Corp. v. Basic Holding, Inc.*, 581 F.3d 1317, 1328 (Fed. Cir. 2009)).

Similarly, to plead contributory infringement, Sonos must plead facts giving rise to a reasonable inference: “(1) that there is direct infringement, (2) that the accused infringer had knowledge of the patent, (3) that the component has no substantial non-infringing uses, and (4) that the component is a material part of the invention.” *Asia Vital Components Co. v. Asetek Danmark A/S*, 377 F. Supp. 3d 990, 1019 (N.D. Cal. 2019) (quoting *Fujitsu Ltd. v. Netgear Inc.*, 620 F.3d 1321, 1326 (Fed. Cir. 2010)).

C. Willful Blindness.

The knowledge necessary to support either willful infringement or indirect infringement can also be met by a showing (or, at the motion to dismiss stage, well-plead allegation) of willful blindness. *Corephotonics*, 2018 WL 4772340, at *9 (“Post-*Halo*, courts have recognized that allegations of willful blindness can satisfy the knowledge requirement for willful infringement.”); *see also Straight Path IP Grp., Inc. v. Apple Inc.*, No. C 16-03582 WHA, 2017 WL 3967864, at *4 (N.D. Cal. Sept. 9, 2017) (denying motion for judgment on the pleadings on an enhanced damages claim predicated on plaintiff’s willful blindness allegation).

1 **IV. ARGUMENT**

2 **A. Google Willfully Infringed the '855, '033 and '966 Patents.**

3 Google argues that Sonos's willful infringement claims should be dismissed because
4 Sonos "has not pled pre-suit knowledge" and Sonos purportedly did not "set forth any allegations
5 plausibly leading to an inference" of egregious behavior. MTD at 4. The Court should reject both
6 arguments.

7 **1. Google Had Pre-Suit Knowledge of All Three Patents.**

8 To state a claim for willful infringement, Sonos must allege that Google knew of Sonos's
9 patents and then acted or continued to act even though it knew it was infringing Sonos's patents
10 or that the risk of infringement was obvious. *See Corephotonics*, 2018 WL 4772340, at *7 (citing
11 *Arctic Cat Inc. v. Bombardier Recreational Prod. Inc.*, 876 F.3d, 1350, 1371 (Fed. Cir. 2017)).
12 That is exactly what Sonos did. *See* SAC ¶ 35 ("Sonos provided a pre-filing copy of both the
13 original complaint and this Amended Complaint to Google, thereby providing clear pre-suit
14 notice of infringement of the patents-in-suit. Google . . . did not [stop infringing] in response");
15 *see also id.* ¶¶ 92, 96 (alleging pre-suit knowledge for the '033 Patent; *id.* ¶¶ 117, 121 (alleging
16 pre-suit knowledge for the '996 Patent); and *id.* ¶¶ 130, 134 (alleging pre-suit knowledge for the
17 '885 Patent).

18 Although Google argues that Sonos failed to plead pre-suit knowledge, *see* MTD at 4-6,
19 Google's motion *itself* shows otherwise. For example, Google's motion cites (and does not
20 challenge) the SAC's allegation that: "On January 8, 2021, Sonos provided Google with a draft of
21 this Amended Complaint prior to its filing. That draft identified the '885 Patent and described
22 how Google's products infringed." MTD at 5 (citing SAC ¶¶ 130, 133). Google's own motion
23 thus acknowledges that Google received a copy of the '885 Patent and had knowledge of Sonos's
24 specific allegations of infringement more than a month before Sonos first filed any complaint
25 asserting that patent.

26 For the '033 and '966 Patents, Google's motion likewise acknowledged that Google
27 received a draft of the original complaint prior to filing, and that the draft both identified the '033
28 and '966 Patents and specifically described *how* Google's products infringed them. *See* MTD at 6

(citing SAC ¶¶ 92, 95, 117, 120).

According to Google, the knowledge it actually gained through the delivery of draft complaints doesn't count because that knowledge was obtained through receipt of pre-filing copies of the complaint delivered: (a) during a meet and confer, for the '885 Patent; and (b) the day before the original complaint was filed, for the '033 and '966 Patents. MTD at 5, 6. Google's arguments are wrong.

First, to defeat a motion to dismiss for supposed lack of knowledge, Sonos "need only 'make out the barest factual assertion of knowledge' of the patent[s]." *Illumina, Inc. v. BGI Genomics Co.*, No. 19-CV-03770-WHO, 2020 WL 571030, at *6 (N.D. Cal. Feb. 5, 2020) (quoting *Finjan, Inc. v. Sophos, Inc.*, No. 14-cv-01197-WHO, 2015 WL 7075573, at *3 (N.D. Cal. Nov. 13, 2015)). In other words, the question at this stage is simply whether Sonos has provided enough factual content to make it facially plausible that Google had pre-suit knowledge. *MasterObjects, Inc. v. Amazon.com, Inc.*, No. C 20-08103 WHA, 2021 WL 4685306, at *1 (N.D. Cal. Oct. 7, 2021) (quoting *Bell*, 550 U.S. at 570). Sonos has plainly satisfied that burden because Sonos alleged—and Google has conceded—that Google both knew of the '885, '033, and '966 Patents and how Google was alleged to infringe them prior to Sonos's filing of both the original and operative complaints. *See, e.g.*, SAC ¶¶ 92-93, 117-18, 130-31. There is nothing in the law that says that knowledge "doesn't count" if it was obtained in a meet and confer⁴ or close to when the complaint was filed.

Second, while Google takes issue with the timing of Sonos's allegations of pre-suit knowledge of the '033 and '966 Patents, Google clearly had enough time to review and respond to that notice, given that it filed its own complaint for declaratory judgment *before* Sonos filed. *See* DJ Dkt. 1; *see also Evolved Wireless, LLC v. Samsung Elecs. Co.*, No. CV 15-545-SLR-SRF, 2016 WL 1019667, at *4 (D. Del Mar. 15, 2016), *report and recommendation adopted*, No. 15-545-SLR-SRF, 2016 WL 1381765 (D. Del. Apr. 6, 2016) (finding notice timeline sufficient

⁴ Google's position (which is largely unexplained) on this point seems strange. Presumably, the Court would want to *encourage* plaintiffs to meet and confer with defendants in advance of filing claims for infringement – not punish a plaintiff for having done so by requiring it to, e.g. jump through some separate and additional hoop in order to give the defendant "knowledge" of the patents that were the subject of the discussion.

1 where defendant “had enough time to file some form of response to the letter”). By bringing its
 2 DJ action on September 28, 2020, Google represented to the Court that it had sufficient
 3 knowledge of Sonos’s patents to conduct reasonable due diligence and conclude that it did not
 4 infringe. *See* DJ Dkt. 28 at 20-21 (“Immediately after receiving Sonos’s proposed complaint,
 5 Google investigated the allegations and determined that it had a legitimate Rule 11 basis to
 6 believe that it does not infringe.”). But in its MTD, Google effectively says just the opposite—
 7 that it did *not* have substantive knowledge of these patents before Sonos filed on September 29.
 8 MTD at 6. These positions are irreconcilable.

9 The Federal Circuit has also rejected Google’s argument. For example, in *Mitutoyo Corp.*
 10 *v. Cent. Purchasing, LLC*, 499 F.3d 1284, 1290 (Fed. Cir. 2007) the Federal Circuit found that a
 11 declaratory judgment suit filed by the defendant challenging the validity of a patent established
 12 that the defendant had knowledge of that patent and was thus “sufficient to meet the requirements
 13 of Rule 8(a)(2) for pleading a willful infringement claim and avoid dismissal under Rule
 14 12(b)(6).” That logic applies even more forcefully here, where Google did not simply challenge
 15 the asserted patents’ validity—but instead challenged Google’s *infringement*. Given Google’s
 16 pre-filing allegation that it did not infringe, it is (quite simply) impossible for Google to now
 17 claim that it did not know what and how it was being accused of infringement *before* Sonos filed
 18 its original complaint.

19 *Third*, Google’s argument ignores the fact that the claims it seeks to dismiss are in the
 20 Second Amended Complaint, not in an original complaint. Google received notice of the ’033 and
 21 ’966 Patents five months before the operative complaint was filed. SAC ¶¶ 35, 92, 117. And
 22 Google *admits* that it was given a copy of Sonos’ infringement allegations relative to the ’885
 23 Patent five weeks before Sonos *first* filed claims relating to that patent. MTD at 5; SAC ¶ 130;
 24 Dkt. 49. Thus, even if the Court had reservations about the short duration between the time that
 25 Sonos provided a draft of the original complaint and the time it filed that complaint, the Court
 26 should still reject *this motion* – because it is undisputed that Google had knowledge of all the
 27 challenged patents and claims well before Sonos filed the operative complaint. *See, e.g.,*
 28 *MasterObjects*, 2021 WL 4685306, at *6 (finding that amended complaint properly states a claim

1 for post-suit willful infringement where original complaint gave notice); *Illumina*, 2020 WL
 2 571030, at *7 (“CGI may assert post-suit knowledge to support its claims of induced infringement
 3 . . . [based] upon service of the Counter-Complaint in this action.”).

4 *Fourth*, the cases that Google cites are distinguishable. For example, in *Evolved Wireless*,
 5 pre-suit knowledge was alleged based on a letter that “include[d] a list of eighty-five U.S. and
 6 foreign patents and applications, stating that ‘the use of one or more patent claims in the portfolio
 7 is required to practice or otherwise comply with LTE standards or technical specifications.’”
 8 *Evolved Wireless*, 2016 WL 1019667, at *3. The court specifically found that the notice letter did
 9 “not specifically identify the patents-in-suit . . . from the list of eighty-five patents and patent
 10 applications.” *Id.* Similarly, in *Intellectual Ventures*, pre-suit knowledge was broadly pleaded
 11 based on “general allegation[s]” about discussions, a presentation, and a letter, with no factual
 12 allegations of what those discussions, presentation, or letter included. *Intellectual Ventures I LLC*
 13 *v. Toshiba Corp.*, 66 F. Supp. 3d 495, 500 (D. Del. 2014). And in *Orlando Communications*, the
 14 notice letters merely “advise[d] each of the recipients that they should contact the sender as soon
 15 as possible to discuss obtaining a license to the [asserted] patents.” *Orlando Commc’ns LLC v.*
 16 *LG Elecs., Inc.*, No. 6:14-CV-1017-ORL-22KRS, 2015 WL 1246500, at *12 (M.D. Fla. Mar. 16,
 17 2015) (internal quotation marks omitted).

18 None of those cases are comparable. In this case, the *specific* advance notice Sonos
 19 provided through its the September 28, 2020 draft complaint and the January 8, 2021 draft
 20 amended complaint is far more detailed than the kind of notice found inadequate in the cases
 21 cited above. Sonos did not simply suggest Google take a license, or obliquely reference dozens of
 22 patents. Instead, Sonos specifically accused Google of infringement, and gave Google a copy of
 23 the exact allegations Sonos intended to make against it – allegations which identified each
 24 challenged patent, the asserted claims, and the infringing products and gave Google *copies* of
 25 Sonos’s preliminary infringement contentions. *See* SAC ¶¶ 35, 93-95, 118-20, 131-33.

26 *Finally*, and in the alternative, Google was willfully blind to the existence of the asserted
 27 patents well before Sonos filed suit, as well as to Google’s infringement of them. As noted above,
 28 the operative Complaint explains that Google approached Sonos under the guise of cooperation,

1 received extensive technical information, and then set out to copy Sonos' features. *See* §II.A.
 2 *supra*. Thereafter, Sonos engaged in extensive discussions with Google concerning the families of
 3 the three challenged patents and Sonos repeatedly put Google on notice of multiple family
 4 members of each of them in the years leading up to this action. *See* §II.B. *supra*. In that
 5 correspondence, Sonos also repeatedly informed Google that it was continuing to prosecute and
 6 obtain patents in the same families and that Google's products would also read on these later
 7 patents. *Id.*

8 The detail with which Sonos identified and explained the nature of Google's infringement,
 9 and the fact that Sonos put Google on notice of multiple direct family members of the three
 10 patents challenged in this motion, when taken together with the history of the parties'
 11 cooperation, and Sonos' express warnings that Google would infringe forthcoming patents,
 12 should have demonstrated to Google that operating in this sector without a license to Sonos's
 13 portfolio created an objectively high risk of infringement. Taken together, these facts give rise to
 14 the plausible inference that Google either knew of the asserted patents well before the filing of
 15 this suit or was willfully blind to their existence and of Google's infringement. *See, e.g.,*
 16 *Corephotonics*, 2018 WL 4772340, at *9 ("Based on Apple's prior knowledge of Corephotonics'
 17 technology and its conduct during negotiations with Corephotonics, it is plausible to infer [that]
 18 Apple knew of at least a high risk that it was infringing Corephotonics' valid and enforceable
 19 patents.") (internal quotation marks and citation omitted).

20 **2. Sonos Is Not Required to Plead, Much Less Prove, Egregious Conduct.**

21 Google argues that Sonos's willful infringement claims fail because Sonos "fails to raise a
 22 plausible inference of egregious behavior." MTD at 7. Google is wrong on both the law and the
 23 facts. As the Federal Circuit recently clarified, to state a willful infringement claim Sonos needs
 24 only plead that Google deliberately or intentionally infringed. *See Eko Brands*, 946 F.3d at 1378
 25 ("the concept of 'willfulness' requires a jury to find no more than deliberate or intentional
 26 infringement" while "considerations of egregious behavior" should be "addressed by the court
 27 once an affirmative finding of willfulness has been made."). Following *Eko*, courts in this district
 28 have held that a patentee does not need to plead facts showing egregious misconduct to state a

claim for willful infringement. *See Core Optical Techs., LLC v. Juniper Networks Inc.*, No. 21-CV-02428-VC, 2021 WL 4618011, at *3 (N.D. Cal. Oct. 7, 2021) (“As for egregiousness, a patentee need only plead that the defendant engaged in ‘deliberate or intentional infringement.’”) (quoting *Eko*, 946 F.3d at 1378); *see also AllRounds, Inc. v. eShares, Inc.*, No. 20-CV-07083-VC, 2021 WL 5195099, at *1 (N.D. Cal. Nov. 9, 2021) (denying a motion to dismiss and holding that a claim for willful infringement requires only knowledge of the patent and deliberate or intentional infringement).

In the SAC, Sonos pleaded that Google deliberately infringed the ’855, ’033 and ’966 Patents. *See* SAC ¶¶ 98, 124, 136. Because Sonos “has asserted that [Google] deliberately infringed the [] patents, its complaint pleads willful infringement; the ultimate question whether the alleged conduct is sufficiently egregious to warrant enhanced damages is for the Court to decide at summary judgment or after trial.” *Core Optical*, 2021 WL 4618011, at *3 (holding that plaintiff was not required to plead egregiousness at pleading stage).

Other courts have held that “broader allegations of willfulness without a specific showing of egregiousness are sufficient to withstand a motion to dismiss.” *Kyowa Hakka Bio, Co. v. Ajinomoto Co.*, No. CV 17-313, 2018 WL 834583, at *13 (D. Del. Feb. 12, 2018) (citing cases). Therefore, “where a complaint permits an inference that the defendant was on notice of the potential infringement and still continued its infringement, the plaintiff has pled a plausible claim of willful infringement.” *Id.*

By insisting otherwise, Google “seems to conflate the standards for pleading willful infringement with the standards for proving willful infringement. ... At the pleading stage, it is not necessary to show that the case is egregious.” *Shire ViroPharma Inc. v. CSL Behring LLC*, No. CV 17-414, 2018 WL 326406, at *3 (D. Del. Jan. 8, 2018); *see also Longhorn Vaccines & Diagnostics, LLC v. Spectrum Sols. LLC*, No. 220-CV-00827-DBB-JCB, 2021 WL 4324508, at *13 (D. Utah Sept. 23, 2021) (“[T]o establish that the infringement was willful, evidence of egregious conduct, beyond deliberateness, is not required . . .”); *IOENGINE, LLC v. PayPal Holdings, Inc.*, No. CV 18-452-WCB, 2019 WL 330515, at *7 (D. Del. Jan. 25, 2019) (“there is no requirement that the plaintiff plead additional facts, beyond knowledge of the patent or

1 patents, in order for a claim of willful infringement to survive a motion to dismiss.”).

2 3. Sonos Pleaded that Google Behaved Egregiously.

3 The SAC contains numerous factual allegations allowing the Court to reasonably infer
 4 that Google has acted egregiously. For example, Sonos has pleaded, *inter alia*, that: (1) Google
 5 and Sonos initially worked together to integrate Google’s products into the Sonos ecosystem
 6 (SAC ¶ 12); (2) only eighteen months after Sonos and Google successfully integrated Google
 7 Play Music into the Sonos ecosystem, “Google began willfully infringing Sonos’s patents” using
 8 knowledge it gained from Sonos (*id.* ¶ 14); (3) since that time, Google has launched multiple
 9 features that it copied from Sonos (*id.* ¶¶ 13, 15-16, 21, 39) and has continued doing so despite
 10 repeated notices of infringement from Sonos (*id.* ¶¶ 17-29); (4) Sonos has put Google on notice of
 11 various patents since 2016—including the ’206 Patent, which is the grandparent from which the
 12 ’855 and ’966 Patents continue (*id.* ¶¶ 17-21), and the ’615 Patent, which shares a specification
 13 with the ’033 Patent (*id.* ¶ 22); (5) Sonos provided Google with pre-filing copies of the original
 14 and amended complaints, “thereby providing clear pre-suit notice of infringement of the patents-
 15 in-suit” (*id.* ¶ 35); (6) despite receiving pre-filing copies of the complaint, Google “has never
 16 given any indication that it is willing to stop infringing” (*id.*) and, on information and belief,
 17 Google is “unwilling to stop infringing because its infringement of Sonos’s patented inventions
 18 has paved the way for Google to generate billions of dollars in revenue” (*id.* ¶ 36; *see also id.* ¶¶
 19 37-39); (7) Google’s infringement is part of a “calculated strategy to vacuum up invaluable
 20 consumer data from users and, thus, further entrench the Google platform among its users and
 21 fuel its dominant advertising and search platforms” (*id.* ¶ 40); and (8) Google and Sonos are
 22 engaged in additional litigation in the ITC and NDCA relating to Google’s infringement of
 23 similar Sonos technology (*id.* ¶¶ 10, 26-27).

24 To be clear, this is no “garden-variety” patent case. MTD at 1. Sonos pleaded that Google
 25 began intentionally infringing Sonos’s patents within eighteen months of their partnership
 26 commencing and has continued non-stop since. *See* SAC ¶¶ 14-29. The International Trade
 27 Commission recently agreed, finding that the same accused products here infringe five different
 28 Sonos patents. *See* Final Determination Notice, *Certain Audio Players and Controllers*,

1 *Components Thereof, and Products Containing Same*; Inv. No. 337-TA-1191 (Jan. 6, 2022).
 2 Indeed, only *after* that order came down, did Google start taking steps to strip the infringing
 3 features from its products.⁵ At the same time, as this Court found, Google filed a thoroughly
 4 inadequate complaint to try to jump in front of Sonos and has had its lead counsel tell this Court
 5 that *all* of Sonos' claims are "trivial"—an assertion that strongly suggests Google's conduct is
 6 intentional and motivated by a view that Sonos' intellectual property lacks value. DJ Dkt. 73, Oct.
 7 7, 2021 Hearing Tr., at 9:15-18, 11:15-18.

8 It's hard to look at the allegations in the SAC and Google's pattern of conduct and assert
 9 that there is no way Sonos could succeed in showing that Google's misconduct has gone beyond
 10 what is found "'in a typical infringement case' and thus was egregious." *Finjan, Inc. v.*
 11 *SonicWall, Inc.*, No. 17-CV-04467-BLF, 2018 WL 2234370, at *3 (N.D. Cal. May 16, 2018)
 12 (quoting *Halo*, 579 U.S. at 104). Thus, even if Sonos were required to show egregious conduct to
 13 plead willfulness (it is not), the Court should deny Google's motion.

14 **B. Sonos Adequately Pleads Indirect Infringement for the '855, '033 and '966**
 15 **Patents.**

16 In the second half of its brief, Google argues that Sonos's indirect infringement claims for
 17 the '855, '033 and '966 Patents should be dismissed because they purportedly "do not sufficiently
 18 allege pre-suit notice, specific intent, and substantial non-infringing uses." MTD at 9. As
 19 discussed below, these arguments lack merit.

20 **1. Google Had Pre-Suit Notice of Sonos's Indirect Infringement Claims.**

21 Google's first argument on indirect infringement rehashes its argument that Google did
 22 not have pre-suit knowledge of the patents. MTD at 9. In particular, Google cites *CAP* and
 23 *Radware* for the proposition that "a plaintiff's failure to allege pre-suit knowledge warrants
 24 dismissal of indirect infringement claims to the extent that they are premised on pre-suit
 25 conduct." *See* MTD at 10. But Google misses the point: neither the broader proposition nor the
 26 cases Google cites are relevant because Sonos *did* allege pre-suit knowledge, both directly and

27 ⁵ *See* Ron Amadeo, "Google Loses Sonos Patent Case, Starts Stripping Functionality from
 28 Speakers," *available at* <https://arstechnica.com/gadgets/2022/01/google-loses-sonos-patent-case-starts-stripping-functionality-from-speakers/>

1 through willful blindness.⁶

2 In particular, Sonos specifically pleaded both that Google had pre-suit knowledge of the
3 '855, '033 and '966 Patents, and that this knowledge supported a claim for indirect infringement.
4 See SAC ¶¶ 93-94 (explaining how Google's pre-suit knowledge of the '033 Patent resulted in
5 indirect infringement), 118-19 (explaining how Google's pre-suit knowledge of the '966 patent
6 resulted in indirect infringement), 131-32 (explaining how Google's pre-suit knowledge of the
7 '885 Patent resulted in indirect infringement).

8 Google then argues that pre-suit knowledge is necessary to sustain a claim for post-suit
9 indirect infringement. MTD at 10-12. As an initial matter, this argument is futile—Sonos alleged
10 that Google had pre-suit knowledge, so *even if* Google were correct that pre-suit knowledge was
11 needed to support post-suit indirect infringement, its argument would fail. But Google is also
12 wrong on the merits. “Courts in the Northern District of California have held that knowledge of a
13 patent based on the filing of a complaint is sufficient to meet the knowledge requirement for an
14 induced infringement claim.” *Skyworks Sols., Inc. v. Kinetic Techs., Inc.*, No. 14-CV-00010-SI,
15 2015 WL 881670, at *8 (N.D. Cal. Mar. 2, 2015); *see also MasterObjects*, 2021 WL 4685306, at
16 *6 (finding that the “second amended complaint adequately alleges post-suit knowledge of the
17 patents-in-suit and knowledge of infringement.”); *Nanosys, Inc. v. QD Vision, Inc.*, No. 16-CV-
18 01957-YGR, 2016 WL 4943006, at *5 (N.D. Cal. Sept. 16, 2016) (“[P]ost-suit knowledge is
19 sufficient to sustain a finding that defendant had the requisite knowledge to support claims for
20 induced infringement.”); *Illumina*, 2020 WL 571030, at *7 (“CGI may assert post-suit knowledge
21 to support its claims of induced infringement . . . Since CGI alleges that Illumina had knowledge
22 upon service of the Counter-Complaint in this action on September 30, 2019, it has adequately
23 alleged post-suit knowledge.”).

24 Google cites inapposite and non-binding decisions in service of its contrary assertion. *See*

25
26 ⁶ In a footnote, Google asserts that Sonos has “failed to plead facts raising a plausible inference
27 that Google was willfully blind to the '855, '033 and '966 patents.” MTD at 9. Because Sonos
28 pleaded that Google had actual pre-suit knowledge of all three patents, *see* SAC ¶¶ 92-95, 117-
120, and 130-134, Sonos does not need to allege facts showing that Google was willfully blind.
Even so, Sonos included ample factual allegations to support an inference of willful blindness.
See § IV.A.1 *supra*.

MTD 10-11. In particular, the Northern District cases that Google cites are either irrelevant or support Sonos. *Id.* CAP explicitly rejected the idea that pre-suit notice should be required for post-suit indirect infringement claims: “[t]he Court sees no reason to adopt a rule requiring an allegation of pre-suit knowledge for all infringement claims. A complaint is a perfectly adequate notice to defendants for indirect infringement claims for post-filing conduct.” *CAP Co. v. McAfee, Inc.*, No. 14-CV-05068-JD, 2015 WL 3945875, at *5 (N.D. Cal. June 26, 2015). *Radware* noted that “knowledge based on the filing of suit is sufficient to state a claim for indirect infringement.” *Radware, Ltd. v. A10 Networks, Inc.*, No. C-13-02021-RMW, 2013 WL 5373305, at *2 (N.D. Cal. Sept. 24, 2013). And none of the other Northern District cases Google cites addressed the issue. *See Avocet Sports Tech., Inc. v. Garmin Int’l, Inc.*, No. C 11-04049 JW, 2012 WL 1030031, at *4 (N.D. Cal. Mar. 22, 2012); *Finjan, Inc. v. Juniper Networks, Inc.*, No. C 17-05659 WHA, 2018 WL 905909, at *5 (N.D. Cal. Feb. 14, 2018); *People.ai, Inc. v. SetSail Techs., Inc.*, No. C 20-09148 WHA, 2021 WL 2333880, at *6 (N.D. Cal. June 8, 2021); and *Fluidigm*, 2020 WL 408988, at *3.

In sum: Sonos pleaded that Google had pre-suit knowledge of its indirect infringement claims, and pre-suit knowledge is not necessary to sustain a claim of post-suit indirect infringement. Sonos’s indirect infringement claims are, therefore, adequately pleaded.

2. Google Had Specific Intent to Induce Infringement.

Although it did not include the argument in its *précis*, Google’s motion to dismiss argues that Sonos failed to plead that Google had specific intent to induce infringement for the ’855, ’033 and ’966 Patents.⁷ “For an allegation of induced infringement to survive a motion to dismiss, a complaint must plead facts plausibly showing that the accused infringer ‘specifically intended [another party] to infringe [the patent] and knew that the [other party]’s acts constituted infringement.” *Nalco Co. v. Chem-Mod, LLC*, 883 F.3d 1337, 1355 (Fed. Cir. 2018) (quoting *In*

⁷ Pursuant to the Court’s Case Management Order in the lead case, Google was required to file a *précis* seeking permission to file a Rule 12 motion to dismiss Sonos’s claims of willful and indirect infringement. *See* DJ Dkt. 67. In its *précis*, Google argued that Sonos’s indirect infringement claims should be dismissed because “Sonos’s SAC fails to sufficiently plead pre-suit knowledge of the ’885, ’033, and ’966 Patents.” *See* Dkt. 125 at 3. Google did not make any arguments regarding specific intent. *Id.* The Court should therefore decline to consider this argument and consider it waived.

1 *re Bill of Lading Transmission and Processing Sys. Patent Litig.*, 681 F.3d 1323, 1339 (Fed. Cir.
2 2012)).

3 The Federal Circuit has found specific intent where a party provides “evidence of active
4 steps taken to encourage direct infringement,” which can in turn be found in “advertising an
5 infringing use or instructing how to engage in an infringing use”—so long as there is “intent to
6 encourage infringement.” *Takeda Pharms. U.S.A., Inc. v. W.-Ward Pharm. Corp.*, 785 F.3d 625,
7 630-31 (Fed. Cir. 2015) (internal quotations omitted) (emphasis in original). Courts in this district
8 have also found that specific intent can be inferred from advertising or promotion of infringing
9 products and features. *See Symantec Corp. v. Veeam Software Corp.*, No. C 12-00700 SI, 2012
10 WL 1965832, at *4 (N.D. Cal. May 31, 2012) (“Specific intent can reasonably be inferred in this
11 case from the allegations regarding defendant’s marketing materials and offers to sell the
12 infringing products.”); *Teradata US, Inc. v. SAP SE*, No. 20-CV-06127-WHO, 2021 WL 326930,
13 at *7 (N.D. Cal. Feb. 1, 2021) (finding specific intent where defendant encouraged its customers
14 to run SAP Hana “through advertisements, marketing, and product support efforts”); *Radware*,
15 2013 WL 5373305, at *6 (inferring specific intent where plaintiff alleged that party “engages in
16 promotional, advertising and instructional activities directed at its customers and potential
17 customers”); *cf. UPF Innovations, LLC v. Intrinsic ID, Inc.*, No. 19-CV-02711-VC, 2019 WL
18 4729601, at *2 (N.D. Cal. Sept. 17, 2019) (“The complaint alleges that Intrinsic ID sold the
19 accused products to third parties and produced ‘advertising, documentation, and training
20 materials’ specifically encouraging [an infringing use]”).

21 Sonos pleaded that Google intentionally advertised infringing Google products and
22 encouraged its customers to “engage in activity that constitutes direct infringement” of the ’855,
23 ’033 and ’966 Patents. SAC ¶¶ 93, 118, 131. In other words, Sonos alleged exactly the kind of
24 conduct which *Takeda* characterized as exhibiting the requisite specific intent to impose liability
25 for inducement. *Takeda*, 785 F.3d at 631 (The relevant conduct must “encourage, recommend, or
26 promote infringement.”). For the ’033 Patent, for instance, in addition to “promoting, advertising,
27 and instructing customers and potential customers about the Google Wireless Audio System . . .
28 and encouraging such customers and potential customers to engage in activity that constitutes

1 direct infringement,” SAC ¶ 93, Sonos pleaded that “Google has supplied and continues to supply
 2 the YouTube Music, Google Play Music, and YouTube apps to customers while knowing that
 3 installation and/or use of one or more of these apps will infringe one or more claims of the ’033
 4 Patent, and that Google’s customers then directly infringe one or more claims of the ’033 Patent
 5 by installing and/or using one or more of these apps in accordance with Google’s product
 6 literature. *Id.* Sonos pleaded similar allegations for the ’855 and ’966 Patents. *See id.* ¶¶ 118, 131.
 7 Further, Sonos provided both examples of the relevant marketing materials as exhibits to the
 8 complaint and exemplary infringement claim charts illustrating how the accused products infringe
 9 all three patents. *See id.*, Exs. 22-27 (for the ’033 Patent); Exs. 22-23 (for the ’855 and ’966
 10 Patents).

11 Google complains that Sonos’s allegations were insufficient because Sonos did not
 12 “provide any specific allegations mapping the advertisement or promotion to the performance of
 13 the claimed steps of the patent.” MTD at 13. But Sonos is not required to do so. As noted above,
 14 courts in this district routinely find that allegations that a defendant provided its customers with
 15 marketing materials that encourage infringing use state a claim for induced infringement. *See*
 16 *supra*; *see also Illumina*, 2020 WL 571030, at *6 (collecting authorities holding that providing
 17 marketing materials that encourage infringing use is adequate). Google’s authorities are
 18 unavailing—*CAP* specifically noted that “the patentee need not cite statements from the accused
 19 infringer specifically instructing the direct infringer ‘to perform all of the steps of the patented
 20 method’; it is enough to cite examples where the accused infringer advertised benefits that can be
 21 achieved only through use of the asserted patent.” *CAP Co.*, 2015 WL 3945875, at *5 (internal
 22 quotation omitted); *see also Google LLC v. Princeps Interface Techs. LLC*, No. 19-CV-06566-
 23 EMC, 2020 WL 1478352, at *4 (N.D. Cal. Mar. 26, 2020) (quoting that portion of *CAP* with
 24 approval)). Sonos pleaded—and provided marketing materials—showing just that. *See* SAC, Exs.
 25 22-27 (for the ’033 Patent); Exs. 22-23 (for the ’855 and ’966 Patents).

26 As a result, this Court should find that Sonos adequately pleaded that Google had specific
 27
 28

1 intent to induce infringement.⁸

2 **3. Sonos Alleged the Absence of Substantial Non-Infringing Uses.**

3 Finally, although it also did not include the argument in its *précis* or otherwise seek
4 advanced permission to file a motion seeking to dismiss Sonos' claims of contributory
5 infringement, Google argues that Sonos failed to plead that the accused products have no
6 substantial non-infringing uses.⁹ MTD at 14. "A plaintiff 'need not prove that the accused
7 products have no substantial non-infringing uses at the pleading stage; rather it must allege some
8 facts that take its statements from mere lawyerly fiat to a plausible conclusion—for example, by
9 alleging one or more infringing uses of the accused products and alleging that the products have
10 no other uses.'" *Software Rsch., Inc. v. Dynatrace LLC*, 316 F. Supp. 3d 1112, 1136 (N.D. Cal.
11 2018) (quoting *CAP Co.*, 2015 WL 3945875, at *6). This is exactly what Sonos did.

12 For each of the '885, '033, and '966 Patents, Sonos identified at least one infringing use of
13 the accused products and alleged that the products have no other use. *See* SAC ¶¶ 94 ('033
14 Patent), 119 ('966 Patent), 132 ('885 Patent). Sonos specifically pleaded that Google especially
15 made or adapted the product for an infringing use. *Id.* For the '033 Patent, for example, Sonos
16 alleged that "at a minimum, Google offers for sale, sells, and/or imports the YouTube Music,
17 Google Play Music, and YouTube apps for installation on devices (e.g., smartphones, tablets, and
18 computers) that meet one or more claims of the '033 Patent . . . Further, Google especially made
19 and/or adapted these apps for installation and use on devices that meet the one or more claims of
20 the '033 Patent, and these apps are not a staple article of commerce suitable for substantial
21 noninfringing use." *Id.* ¶ 94. Sonos made similar factual allegations for the '966 and '885 Patents.
22 *Id.* ¶¶ 119 ('966 patent), 132 ('885 patent).¹⁰

23
24 ⁸ Should the Court hold otherwise, Sonos respectfully seeks leave to amend to provide additional
factual support.

25 ⁹ In the *précis*, Google argued only that Sonos's indirect infringement claims should be dismissed
26 because "Sonos's SAC fails to sufficiently plead pre-suit knowledge of the '885, '033, and '966
27 Patents." *See* Dkt. 125 at 3. Google did not make any arguments as to whether Sonos sufficiently
pleaded that the accused products have no substantial non-infringing uses. *Id.* The Court should
therefore decline to consider this argument.

28 ¹⁰ Should the Court hold otherwise, Sonos respectfully seeks leave to amend to provide additional
factual support.

Both the Federal Circuit and courts in this district have refused to dismiss similarly pleaded contributory infringement claims. In *Nalco*, for instance, the Federal Circuit found that describing the “especially made or adapted” infringing use of the accused product and pleading that there were no substantial noninfringing uses was sufficient to state a claim for contributory infringement. *Nalco*, 883 F.3d at 1357. In *Firstface*, the allegation that accused products were “not staple articles of commerce suitable for substantial non-infringing uses” but were instead “specifically programmed and/or configured to implement” the asserted patents adequately pleaded a claim for contributory infringement. *Firstface*, 2019 WL 1102374, at *2. In *Fortinet*, the allegation that “each accused product ‘includes software components ... which are programmed to be used to infringe the [patented] methods’” sufficed to state a claim. *Fortinet, Inc. v. Forescout Techs., Inc.*, No. 20-CV-03343-EMC, 2021 WL 2412995, at *18 (N.D. Cal. June 14, 2021). *See also ScaleMP, Inc. v. TidalScale, Inc.*, No. 18-CV-04716-EDL, 2019 WL 7877939, at *4 (N.D. Cal. Mar. 6, 2019) (rejecting argument that allegations of contributory infringement are “naked assertions” that are insufficient to state a claim); *Core Optical*, 2021 WL 4618011, at *4 (N.D. Cal. Oct. 7, 2021) (refusing to dismiss contributory infringement claim where plaintiff pleaded that devices were “especially adapted” for infringement).

The cases that Google cites to support the purported lack of substantial non-infringing uses are all distinguishable. First, *Artrip* (a non-precedential opinion) found that the plaintiff did not plead substantial non-infringing use, but (unlike Sonos) the plaintiff did not plead that the product had been especially made and/or adapted for an infringing use. *Artrip v. Ball Corp.*, 735 F. App’x 708, 713 (Fed. Cir. 2018). *Princeps* and the other cases cited by Google are distinguishable because Sonos provided significant “factual underpinnings” to support its allegations of contributory infringement—Sonos provided a detailed exemplary claim chart for each of the three patents showing that the accused products are material components for use in practicing the asserted patents and that the products are especially made or adapted for use in infringing the asserted patents. *See* SAC ¶¶ 94 (’033 Patent), 119 (’966 Patent), 132 (’885 Patent). In sum, these are no mere “conclusory allegations.” MTD at 14. Instead, the Complaint contains specific and detailed allegations saying *how* the patents are infringed, saying expressly that that

1 functionality is specifically adapted for infringement, and alleging that there are no other uses for
 2 the specific software that provides the accused functions which don't infringe. That is all that is
 3 required.

4 **C. Dismissal with Prejudice Is Not Warranted.**

5 Google wrongly contends that Sonos's willfulness and indirect infringement claims
 6 should be dismissed with prejudice because "further amendments would be futile." MTD at 15.
 7 "Under futility analysis, '[d]ismissal without leave to amend is improper unless it is clear, upon
 8 de novo review, that the complaint could not be saved by any amendment.'" *United States v.*
 9 *Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011) (quoting *Krainski v. Nevada ex rel. Bd. of*
 10 *Regents of NV. Sys. of Higher Educ.*, 616 F.3d 963, 972 (9th Cir. 2010) (internal citation and
 11 quotation marks omitted)).

12 As we have explained, Google is wrong—Sonos amply alleged "sufficient facts
 13 demonstrating pre-suit notice" in both the Western District of Texas briefing and in the present
 14 brief. MTD at 16. Were the Court to find that Sonos has not sufficiently alleged facts to support
 15 its willful or indirect infringement claims, however, Sonos respectfully seeks leave to amend so
 16 that it can provide the Court with additional factual support. Sonos's infringement contentions,
 17 for example, set out its infringement claims with greater detail than what is provided in the
 18 complaint—detail which could be used to further support Sonos' allegations. Similarly, as
 19 explained herein, there are further facts concerning Google's willful (and willfully blind)
 20 infringement that Sonos can amend to allege in greater detail should the Court find it necessary.
 21 Dismissal with prejudice is therefore improper. *Corinthian*, 655 F.3d at 995. This is especially
 22 true because Google has notice of Sonos's claims so Google would not be harmed by allowing
 23 amendment.

24 Finally, Google takes a deeply misguided parting shot at Sonos. Google argues that
 25 "Sonos failed to allege sufficient facts demonstrating pre-suit notice of the '855 '033, and '966
 26 patents despite receiving two opportunities to amend." MTD at 16. Google's oblique
 27 mischaracterization of the factual record in this case warrants correction—no court (either in the
 28 Western District of Texas or in the Northern District of California) has dismissed Sonos's willful

1 or indirect infringement claims for being improperly pleaded. On February 17, 2021, Sonos filed
 2 its First Amended Complaint, adding a claim for infringement of the '885 Patent. Dkt. 49. And on
 3 February 23, 2021, Sonos filed a Second Amended Complaint, dropping its claims related to the
 4 '460 Patent. Dkt. 50. Neither of Sonos's amendments related to the issue of pre-suit notice, and
 5 Google misconstrues the record when it suggests otherwise.

6 **V. CONCLUSION**

7 For the reasons stated herein, Sonos respectfully asks the Court to deny Google's motion to
 8 dismiss Sonos's claims of willful and indirect infringement for the '885, '033, and '966 patents.

9
 10 Dated: January 24, 2022

By: */s/ Clement Seth Roberts*

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